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

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Judgment delivered on: March 23rd 2015

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W.P.(C) 13840/2006

LAJPAT RAI (SINCE DECEASED) THR: LRS Petitioner

Represented by: Ms. Richa Kapoor, Adv.

Versus

D.D.A.

.... Respondent

Represented by: Mr. Ajay Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioner seeks setting aside of order dated 10.07.2006 whereby MIG plot No.272, Pocket-9, Sector-21, Rohini, Delhi, measuring 60 sq.mtr., allotted to him under Rohini Residential Scheme, 1981 (Rohini Extension) has been cancelled.
2. Further seeks direction thereby directing the respondent to hand over the physical possession of above mentioned plot to the petitioner.
3. It is pertinent to note that the petitioner died during the pendency of present petition. Accordingly, vide order dated 02.05.2008, passed in CM. No. 6480/2008, legal heirs of the petitioner were directed to be brought on record.

4. Facts of the case are that the petitioner applied for plot of MIG category in a Rohini Residential Scheme vide application No.55096 and deposited a sum of Rs.5,000/- vide receipt No.01786 dated 30.03.1981. The respondent/DDA allotted MIG plot measuring 60 sq.mtr., as mentioned above and demanded a premium of Rs.21,823.77/-. The total balance premium was required to be paid within thirty days without interest and within six months with interest, if any. The last date to make payment was 09.08.1990. The petitioner made the aforementioned payment vide Manager's Cheque dated 29.06.1990 drawn on UCO Bank, Karol Bagh, New Delhi, vide chalan No.1531 dated 05.07.1990. Consequent upon the receipt of demanded payment, respondent issued possession letter on 25.07.1996 and the petitioner was directed to contact the Site Engineer of the area to take possession of the plot.

5. The petitioner made various correspondences from 17.08.1996 to 13.01.2006, which are on record, with the respondent intimating that the site of the plot was not developed and was without amenities. Thus, in absence thereof, the plot was not fit for handing over the possession to the petitioner.

6. It is pertinent to note that the respondent/DDA had made many internal correspondences to its various officers and departments regarding the basic amenities like street light, water supply, *pucca* road linking colony and main sewer, etc., which are on record.

7. The respondent/DDA also made various correspondences with petitioner from 26.03.1997 to 30.10.2002 regarding taking over the possession and also intimated that the basic amenities were available at the

site. The respondent/DDA vide letter dated 03.04.2002 intimated the petitioner that basic amenities have been provided and as per office letter dated 13.01.2000 received from Superintending Engineer, Rohini, the petitioner was requested to take physical possession of the plot by applying duplicate possession letter. And in response to petitioner's letter dated 17.08.2002, the respondent asked the Executive Engineer (EE), RPD for status of development of work of particular Pocket. This letter was endorsed to petitioner requesting him to take over possession after regularization of delay period of possession and was advised to contact EE, PD for progress in particular Pocket. Vide letter dated 31.10.2002, the respondent intimated the petitioner that the external electrification has also been taken up. Thereafter, there was no correspondence between the petitioner and the respondent.

8. The petitioner sought information under RTI vide application dated 30.06.2006. The same was replied by the respondent that the possession letter of the plot in question was issued to the petitioner/allottee on 25.07.1996. As per terms and conditions of possession letter, the petitioner had failed to take over possession of the plot within permissible extended period of six months. Accordingly, the allotment stands cancelled resulting in forfeiture of earnest money and refund balance premium of the plot after deduction of usual charges. Hence the present petition.

9. Ms. Richa Kapoor, learned counsel appearing on behalf of the petitioner submitted that the Executive Engineer (EE) vide its clarification letter dated 21.06.2006 to Deputy Director (LSB), Rohini, regarding plot allotted to the petitioner has stated that, "... bushes has grown up time to

time, however, at the time of possession, all bushes will be removed.” Learned counsel submitted that it is crystal clear that on 21.06.2006, it was clarified by the Executive Engineer that the plot has become habitable as all basic amenities are being provided.

10. Learned counsel further submitted that the case of the petitioner is squarely covered under the 2002 Scheme of the respondent with regard to Rohini Residential Scheme. Various persons under the same Scheme who were allotted plots had same grievance as that of the petitioner that basic amenities were not provided in and around the allotted plots. The said allottees did not even pay the demanded amount and filed various cases before this Court. The respondent admitted that they have not provided basic amenities at the said plots, and thus formulated policy deferring even payment of amount demanded by them. Accordingly, DDA allowed the allottees to pay 50% of the amount demanded on cash terms and balance 50% amount to be paid when such basic amenities are provided at their plots. The petitioner is at better footing than those who did not pay the demanded amount as per the DDA policy even their allotment were restored and delay in payment was condoned. Thus, there is no reason for not restoring possession to the petitioner who paid demanded amount in time.

11. Learned counsel has drawn attention of this Court to the office order dated 29.04.2002 which stipulates that whenever there is a delay in handing over possession, the case will be referred to the Housing Department and in those cases, restoration will also be taken in addition to watch and ward charges, if restoration is done by the competent authority. The allotment will be cancelled if delay is more than three years. In cases even if

restoration is done beyond three years by the competent authority, the plot would be handed over to the allottees as it is and no repair would be undertaken before handing over possession. Both watch and ward charges and restoration charges are fixed in terms of clause (ii) and (iii) respectively, if there is only delay in taking over possession.

12. Learned counsel for the petitioner, to strengthen her arguments, has relied upon the case of ***Asha Madnani v. Delhi Development Authority & Ors*** decided in W.P.(C) No.201/1993 on 04.12.1996, wherein held as under:

“10. A distinction has to be drawn between the consequence flowing from the default in payment by the allottee in accordance with the terms and conditions of allotment and a default merely in furnishing proof of payments and filing of the documents within the prescribed period. The letter of allotment provides for automatic cancellation of the allotment in both the cases. In the case of default in payment of installments automatic cancellation of allotment has to be sustained because of the consequences flowing therefrom.

10.1. Each allotment is part of a composite scheme. By default in payment the working of the scheme is disturbed and the DDA has to rearrange its financial affairs. An allottee defaulting in payment must give way to an aspirant waiting for an allotment and willing to make payment.

10.2. In case of a mere default in filing of the documents (having no material bearing or eligibility or qualification for allotment) and proof of payments within the prescribed period the considerations are different. Even the respondent-DDA is aware of the payment having been made. It is merely a question of convenience that allottee is required to furnish proof of payment so that collective information as to payments is available at one place and the DDA is not required to scan its records time and again in respect of each allottee. Having

made the payments - all and in time - it is primarily the allottee who suffers by his failure to furnish the documents and proof of payments. Execution of lease and delivery of possession to the allottee would be delayed in spite of his having parted with money and the flat lying ready for delivery of possession. Situation may be different if third party interest or any other similar factor has intervened which would render it inequitable or impossible to accommodate the allottee on his original allotment.

10.3. Therefore, the term as to payment as per schedule must be held to be mandatory while the term as to submission of all the relevant documents alongwith proof of payment within the prescribed period should be held to be directory.”

13. Learned counsel for the petitioner also relied upon a decision of this Court in connected case of **Delhi Development Authority v. Ms. Swarana** in LPA No.2594 of 2005 and **Mr.Vishwa Raj Saxena v. Delhi Development Authority** in LPA No.1110 of 2007 dated 11.01.2008, wherein held as under:

“19. ...Now after a gap of 5 years, it would not be justified to cancel the allotment. We may take lenient view and regularize the delay subject to payment of requisite charges. We do not have any clear policy to deal with regularization of delay in allotment cases. However, in few cases the delay beyond 180 days has already been regularized.

29. Under the Transfer of Property Act, 1882 time is not normally regarded as an essence of contract in transactions relating to immovable properties, unless intention of the parties is to the contrary. Conduct of DDA whereby it condoned delays and belated payments shows that DDA itself did not regard time as essence of contract.

32. ...Equity treats the importance of such time-limits as being

subordinate to the main purpose of the parties.”

14. Ms. Kapoor submitted that there was no show-cause notice issued to the petitioner prior to cancellation, thus no opportunity was given to the petitioner, accordingly, violated the principles of natural justice.

15. Ld. Counsel further submitted that DDA has invoked automatic cancellation, information of which was never conveyed to the petitioner. The petitioner came to know about it only through RTI. The petitioner had intention to have the plot in question, therefore, the demanded amount was already deposited by the petitioner.

16. To strengthen her arguments, learned counsel has relied upon the case of **Raj Kumar Arora v. D.D.A.** decided in W.P.(C) No.943/2007 on 20.02.2008, wherein held as under:

“4. ...The petitioner claims that basic amenities were not provided by DDA and therefore he did not take possession of the said flat. The petitioner however admits that he did not write any letter to DDA during this period alleging that basic civic amenities were not available in the area.

5. DDA has already issued new demand-cum-allotment letter... to the petitioner.the petitioner will be liable to pay watch and ward charges, restoration, cancellation charges and other statutory dues.

7. It is admitted by the respondent-DDA that the said flat had been allotted to a third person without intimation to the petitioner. The petitioner is not being paid any interest on Rs.2,90,242.63p which was deposited by him on or before 13th July, 1994. DDA has from time to time floated schemes for waiver of interest on non-payment/late payment of hire purchase installments and waived interest. As the new demand

cum allotment letter does not specifically stipulate that the petitioner is liable to pay interest on Rs.2,99,403.67p.”

17. Learned counsel submitted that the petitioner never received any communication for offering possession of the plot and no cause of action arose for the payment of third instalment. The DDA cancelled the allotment on untenable grounds of non-payment of the third instalment.

18. To strengthen her arguments, learned counsel has relied upon the case ***Shanti Devi v. D.D.A.*** passed in W.P. (C) No.645/2007 on 08.04.2008, wherein held as under:

“6. The petitioner has already paid cost of LIG flat. The said payments were made in 1989-91. The petitioner is entitled to interest on the said amount from the date of deposit till 31.3.2005. DDA will pay interest @ 7% on the aforesaid amount including the initial deposit till 31.5.2005. Fresh demand letter will be issued within six weeks from today.”

19. On the other hand, Mr. Ajay Verma, learned counsel appearing on behalf of the DDA, submitted that the petitioner was not ready to take possession of the plot on one pretext or the other. As per the terms and conditions of the possession letter, in case allottee failed to take over the possession within permissible extended period of six months, the allotment was to be treated as cancelled and no request for restoration was to be considered. The petitioner never approached the Site Officer for taking over the possession. The letter dated 30.12.1999 shows the factual position/status of the plot in question from Additional Chief Engineer (Rohini). Based on the report dated 13.01.2000, the DDA vide letter dated 3rd April, 2000 informed the petitioner that the basic amenities like sewage,

drainage and water supply lines had already been laid and physical possession of the plot could be taken subject to applicable formalities. However, the petitioner was still taking false and frivolous pleas not to take possession. Again, the respondent vide letter dated 23.08.2002 requested the Executive Engineer Rohini Project Division-12 to send a fresh report regarding factual position/status of the development service in the said Pocket, so that further action will be taken. The respondent in response to his letter dated 17.08.2002 had requested him to take over possession of the plot in question after regularization of period of delay in taking over the possession and in future, he could contact the Executive Engineer, RPD-12 and Electrical Division-9 in office complex, Rohini for progress of development work in the particular Pocket. Upon receipt of the report, DDA vide letter dated 31.10.2002 informed petitioner that all the services were available in the concerned Pocket and external electrification had also been taken up. Accordingly, the petitioner was again directed to take over the physical possession of the plot in question immediately. However, petitioner failed to do so.

20. Mr. Verma further submitted that due to the recall of the petitioner, though not required, respondent had again sought clarification from concerned Chief Engineer, who on 21.06.2006, clarified that all the services were available at site.

21. Mr. Verma submitted that having no option, DDA vide its letter dated 10.07.2006, informed petitioner that since she had failed to take possession of the plot within the permissible extended period of six months followed by letters dated 03.04.2000, 23.08.2002 and again on 31.10.2002, the allotment

of the plot in question had been cancelled resulting in forfeiture of earnest money and refund of balance premium of the plot after deduction usual charges.

22. Learned counsel for the respondent further submitted that the cases relied upon by the petitioner are not applicable on the schemes of the plot. However, applicable on residential scheme for flats only. The petitioner was given sufficient time to take physical possession of the plot and if the said possession is not taken within the time prescribed, that lead to automatic cancellation. The present case is not for delayed payment, it was due to intention of the petitioner not to take the possession and requested the respondent/DDA to allot any plot of bigger size vide its request dated 03.08.1990 which is at page-177 of the petition. The DDA vide communication dated 25.07.1996 fairly stated as under:-

*“Delhi Development Authority
(Land Sales Branch/Rohini)
C-3 Block/Ist Floor, INA Vikas Sadan, New Delhi-23.*

*Only to Addressee
No.F.22 (678)89/LSB (Rohini) 473*

*R.A.D.
Dated: 25.07.96*

To

*Sh. Lajpat Rai s/o Sh. L. Devi Dayal
13A/111 Western Extension Area
Karol Bagh
New Delhi Pin Code No.110005.*

*Sub: Handing over possession of Plot No.272 Pocket 09
Block..... Sector 02 (21) measuring 60 sq. mts.in Rohini
Residential Schem 1981 under MIG category.*

Sir/Madam,

1. Consequent upon completion of all required formalities in pursuance of Demand-cum-Allotment Letter of even number dated 9.2.90 in respect of the above said plot, it has now been decided to hand over the possession of the said plot in anticipation of execution of lease deed as the same is likely to take some time. Accordingly, the concerned Junior Engineer has been directed to hand over the possession of the plot in question to you on paper as well as physically at site on 19.8.96 at 1.00 A.M. to 12 noon and between 2.30 to 4.00 P.M. respectively.

2. Therefore, you are now requested to contact the concerned Junior Engineer on the above said date and time at DDA's site office, Rohini (located near Saraswati Vihar Chowk), Delhi for taking over the possession of the plot in question. You are also requested to produce the original Demand-cum-Allotment Letter and Ration Card/Passport/Identity Card and other relevant papers pertaining to the allotment of the said plot before the site Engineer so as to ensure the genuineness.

3. However, in case you do not turn up for taking over the possession of the said plot on the fixed date and time, you are further permitted to take over the possession of plot directly from the Site Engineer within next six months on payment of penalty @ Rs.50/- per month. Accordingly, the penalty is to be deposited in any scheduled bank of DDA from the fixed date to the date of taking over the possession and present a copy of the bank challan to the Site Engineer for taking over the possession of the plot. Again, in case you failed to take over the possession of the plot within permissible extended period of six months, the allotment will be treated as cancelled resulting in forfeiture of earnest money and refund of balance premium of the plot after deducting usual charges. Further, it may please be noted that no request for restoration of allotment will be considered except in extreme circumstances subject to payment

of restoration charges and also the plot is available.

4. In case possession is not taken over on the above said date, please re-fix date and time with site Engineer with in six months from due date.

*Yours faithfully,
Sd/- 15/7/96
Dy./Jt.Director/Rohini.”*

23. Vide the aforesaid communication, the petitioner was clearly directed to take physical possession of the plot at site on 19.08.1996 at 11AM to 12 noon and between 2.30 to 4 PM respectively. Even vide letter dated 03.04.2000, the petitioner was informed that basic amenities like sewage, water supply lines have already been led as per the office letter dated 13.01.2000 received from the Superintending Engineer (HQ.), Rohini. Accordingly, the petitioner was requested to take physical possession of the plot. Vide communication dated 30.09.1998, the petitioner was asked the reason as to why the petitioner has not taken the physical possession as per letter dated 25.07.1996.

24. Counsel for the respondent has drawn the attention of this Court to the order dated 29.05.2007 whereby the respondent was directed to maintain *status quo* if the plot in question is vacant. The said plot had already been allotted prior to order noted above in the name of some other person, therefore, the said plot cannot be allotted in favour of the petitioner.

25. I have heard ld. Counsel for the parties.

26. Admittedly, the petitioner applied for a plot of MIG category under Rohini Residential Scheme on 30.03.1981 and deposited an amount of

Rs.5,000/-. Accordingly, DDA allotted an MIG plot measuring 60 Sq. Mtrs. to the petitioner and demanded a premium of Rs.21,823.77/-. The last date to make the payment was 09.08.1990 and the petitioner made the aforementioned payment on 05.07.1990. Consequent thereupon, respondent issued a possession letter on 25.07.1996 and the petitioner was directed to contact the site engineer of the area for taking possession of the plot. In the said letter it was clearly mentioned that in case the petitioner does not turn up for taking over the possession of the said plot on the date and time fixed, he was further permitted to take over the possession of the plot directly from the site engineer within next six months on payment of penalty @ Rs.50/- per month from the date fixed to the date of taking over the possession. Again in case, the petitioner failed to take over the possession within the permissible extended period of six months, the allotment will be treated as cancelled resulting in forfeiture of the earnest money and refund of balance premium of the plot after deducting the usual charges. It was specifically stated that no request for restoration of allotment will be considered except in extreme circumstances subject to payment of restoration charges if the plot is available. However, instead of taking over the possession, the petitioner made as many as 16 correspondences from the year 1996 to 2002 with the DDA and pointed out that he could not take the possession for the reasons that the plot had bushes, not identifiable, sewer line was incomplete, no water supply, roads and street lights were incomplete etc.

27. Admittedly, DDA vide letter dated 03.04.2002 intimated the petitioner that as per office letter dated 13.01.2000 received from the Superintending Engineer, Rohini, the basic amenities have been provided.

Accordingly, petitioner was requested to take physical possession of the plot in question. Again, vide letter dated 31.10.2002, respondent intimated the petitioner that external electrification work has also been taken up and he was asked to take the physical possession of the plot in question.

28. Thereafter, in response to petitioner's letter dated 17.08.2002, respondent asked for status of development work of particular Pocket from its Executive Engineer (R.P.D.).

29. It is pertinent to mention here that the petitioner had deposited an amount of Rs.5,000/- at the time of applying the plot and Rs.21,823/- pursuant to demand-cum-allotment letter. The aforesaid amount is the total amount of the plot.

30. As per letter dated 25.07.1996, the possession had to be taken within the maximum extendable period of six months on payment of penalty @ Rs.50/- per month. Admittedly, neither the petitioner had taken the possession nor deposited the penalty amount. Moreover, DDA failed to establish that they had issued any show cause to the petitioner that if the possession of the plot is not taken within the specified time, the allotment of the plot would be cancelled.

31. No doubt, in letter dated 25.07.1996; there was a condition of automatic cancellation. However, DDA failed to apply the said condition and continued to correspond with the petitioner and made internal communications with various departments. The petitioner could only know about the cancellation of the plot, when he sought information under RTI

vide his application dated 30.06.2006. DDA instead of replying the queries, issued a letter dated 10.07.2006 whereby intimated the petitioner about the cancellation of the plot. Thus, neither the petitioner was put on show cause to take possession of the plot failing which the plot would be cancelled nor he was asked to deposit the penalty and other usual charges. Moreover, DDA has not cancelled the allotment of plot due to non-payment of penalty and other charges, however used the condition of communication dated 25.07.1996, which had expired within six months thereafter. DDA ought to have cancelled the plot within the prescribed time as mentioned in letter dated 25.07.1996, however continued to correspond with the petitioner as well as its internal Departments for providing the basic amenities.

32. In my considered opinion, the period of correspondence between the petitioner and the respondent / DDA deemed extension of time and the petitioner is only liable to pay the remaining amount, penalty and other charges applicable with interests from the due date till deposit. Consequently, order dated 10.07.2006 is quashed qua the petitioner. DDA never intimated the petitioner that the said plot had been allotted to a third person. Vide order dated 29.05.2007, respondent was directed to maintain *status quo* if the plot in question is vacant. As stated by the Id. Counsel for the respondent / DDA, the said plot had already been allotted to some other person before the order of *status quo* was passed.

33. Accordingly, respondent / DDA is directed to allot a same size plot in the same area or in other parts of Delhi as per procedure within six months from receipt of this order.

34. I hereby make it clear that the petitioner shall be liable to pay restoration charges, balance amount, if any, penalty and other usual charges with interest as applicable, within the time as may be fixed by DDA.

35. Accordingly, the petition is allowed with no order as to costs.

SURESH KAIT, J.

MARCH 23, 2015

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